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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91181841
Party	Defendant Gebr. Brasseler GmbH & Co. KG
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Date	02/14/2008
Attachments	GBL CERAPOST Answer to Notice of Oppositi.pdf (5 pages)(89702 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before the Trademark Trial and Appeal Board

In the matter of Application Serial. No. 77/039,633
TM: CERAPOST

BRASSELER USA, INC.,)	
)	
Opposer,)	
)	Opposition No. 91181841
v.)	
)	
GEBR. BRASSELER GMBH & CO., KG,)	
)	
Applicant.)	

ANSWER TO NOTICE OF OPPOSITION

Comes now the applicant, Gebr. Brasseler GmbH & Co., KG ("Applicant"), and submits its Answer to the Notice of Opposition filed by Brasseler USA, Inc. ("Opposer") against Applicant's application for registration of the mark CERAPOST, Serial No. 77/039,633, filed November 8, 2006, and published in the Official Gazette on September 25, 2007, by numbered paragraphs as follows:

1. Applicant denies the allegations set forth in Paragraph 1 of Opposer's Notice of Opposition and avers that Applicant was the first to use the mark CERAPOST anywhere, and in commerce which Congress may regulate, in connection with dental instruments. To the extent that Opposer has used the mark CERAPOST in connection with Applicant-manufactured goods as a subsidiary of Applicant and/or as Applicant's U.S. distributor prior to the expiration on December 31, 2006 of a Supply Agreement between the

parties, Opposer's use inured to the benefit of Applicant as the rightful owner of the mark and did not establish rights in Opposer to the mark.

2. The allegations of Paragraph 2 of Opposer's Notice of Opposition are admitted.

3. The allegations of Paragraph 3 of Opposer's Notice of Opposition are admitted except that Opposer's First Extension of Time to Oppose was set to expire on January 23, 2008, not January 16, 2008 as stated in Opposer's Notice of Opposition.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of Opposer's Notice of Opposition and therefore denies the same.

5. The allegations of Paragraph 5 of Opposer's Notice of Opposition are admitted.

6. The allegations of Paragraph 6 of Opposer's Notice of Opposition are admitted.

7. The allegations of Paragraph 7 of Opposer's Notice of Opposition are denied. As stated above, Opposer does not have any rights in the CERAPOST mark.

8. The allegations of Paragraph 8 of Opposer's Notice of Opposition are denied.

Applicant denies that Opposer is entitled to any of the relief sought in the Notice of Opposition or to any relief whatsoever. Each and every allegation contained in the Notice of Opposition which has not heretofore been specifically admitted or denied is generally denied.

AFFIRMATIVE DEFENSES

1. Opposer's Notice of Opposition fails to state a claim upon which relief can be granted.
2. Opposer is barred from asserting the claims as set forth in the Notice of Opposition by the doctrines of waiver and/or estoppel.
3. Opposer is barred from asserting the claims as set forth in the Notice of Opposition by the doctrine of unclean hands.
4. Opposer is barred from asserting the claims as set forth in the Notice of Opposition by the doctrine of laches.
5. Opposer lacks standing to bring this opposition because the Opposer is not the owner of the Opposer's asserted trademark(s). Applicant is the rightful owner of the trademark(s) asserted by Opposer. Any use by Opposer of the asserted trademark(s) inured to Applicant's benefit and did not establish ownership in Opposer.

WHEREFORE, having fully answered, Applicant denies that Opposer could or would be damaged by the allowance of the present application for trademark registration and prays that the Notice of Opposition be dismissed and a certificate of registration granted to Applicant in due course.

Respectfully submitted,

MILLER & MARTIN PLLC

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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that the preceding Answer to Notice of Opposition is being electronically filed with the United States Patent Office through its ESTTA electronic filing system on this 14th day of February, 2008.

Charles W. Forlidas

Charles W. Forlidas

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Answer to Notice of Opposition has been served on Opposer's attorney by mailing a copy thereof via First Class Mail, postage prepaid, on this 14th day of February, 2008 addressed as follows:

Kate D. Strain
Rachel C. Young
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